BAIL SLIP

The Appellant/Accused, Srinivasan in S.C.No.14/1997 on the file of the Addl. District and Sessions judge, Cuddalore was directed to be released on bail in and by hthe order fo this Court dt. 10.12.1997 made in Crl.M.P.No.6548/1997 in Crl.A.No.920/97 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.920 of 1997

Srinivasan ... Appellant / Accused.

Vs.

State represented
by SubInspector of Police,
Mangkalampettai Police Station, ... Respondent / Complainant
Cuddalore District.
(Cr.No.94/93]

This Criminal Appeal arises out of the Judgment dated 13.11.1997 made in S.C.No.14 of 1997 on the file Additional District and Sessions Judge, Cuddalore.

For Appellant : Mr. A.R.Nagarajan

For Respondent : Mr. V.Jayaprakashnarayanan,
Government Adovcate,
(Crl.Side)

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J U D G M E N T

Appellant is the accused in S.C.No.14 of 1997 on the file of Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Cuddalore. By the Judgment dated: 13.11.1997, the Appellant / Accused was convicted under S.304 (II) I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of Five Years.

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2. Case of Prosecution could briefly be stated thus:-

There had been previous enmity between the accused Srinivasan and deceased Chakravarthy on purchase of lands. On the evening of 04.04.1993 - 5.00 p.m., P.W.1 - Natesa Padayachi and the deceased Chakravarthy were proceeding to hand over the Cane. At that time, the accused shouted at the deceased that he could not purchase the land only because of the deceased and saying that the deceased had been responsible for selling the land to P.W.4 - Gopal by P.W.5 - Kadharkodi, the accused had beaten Chakravarthy with M.O.1 - Bamboo Stick on the left Ear. Chakravarthy had fallen down. Thereafter the accused had further beaten the deceased on the back side of his Head. P.W.1 - Natesa Padayachi prevented the accused. P.W.2 - Ramalingam also came there and prevented the accused.

3. Registration of the case and investigation:- After the occurrence, P.W.1 - Natesa Padayachi had taken the injured Chakravarthy to Mangalampettai Police Station. Injured Chakravarthy was unable to talk and in unconscious state. P.W.1 lodged Ex.P.1 - Complaint on the occurrence. On receipt of Ex.P.1 - Complaint, P.W.9 - Head Constable, attached to Mangalampettai Police Station registered the case in Crime No.94 of 1993 under Ss.294 and 325 I.P.C. under Ex.P.11 - First Information Report. Injured Chakravarthy was sent to Ulundurpet Government Hospital for treatment with Memo.

4. P.W.9 - Head Constable had taken up the initial investigation. On the early morning of 05.04.1993 - 5.00 a.m., the accused was arrested and brought to the Police Station. Scene of occurrence was inspected in the presence of Witnesses. Ex.P.2 - Observation Mahazar and Ex.P.12 - Rough Plan were prepared on the scene of occurrence. When the accused was interrogated, he had voluntarily given a Confession Statement and has produced M.O.1 - Bamboo Stick, which was seized under Ex.P.3 - Seizure Mahazar.

5. P.W.7 - Dr.Lakshmanan, attached to Government Hospital, Cuddalore has examined the injured Chakravarthy. He has noted:- A cut injury on the left Ear and contusion of occipit of Head. Ex.P.6 is the Accident Register issued by Ulundurpet Government Hospital and Chakravarthy was referred to Cuddalore Government Hospital for better Management and treatment. Chakravarthy was discharged from the Government Hospital, Cuddalore. While he was in his Village in Manakollai, he succumbed to injuries on 14.04.1993 - 4.00 a.m.

6. P.W.6 - Kaliaperumal went to Mangalampettai Police Station and informed about the death of Chakravarthy. His Statement was recorded as Ex.P.4. On that basis, the case was altered into S.302 I.P.C. under Ex.P.14 - Express Report.

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7. P.W.11 - Inspector of Police had taken up the further investigation. On 14.04.1993 - 10.30 a.m. to 1.00 p.m., in the presence of the Panchayatdars, witnesses were examined and inquest was held on the body of deceased Chakravarthy. Ex.P.15 is the Inquest Report. After inquest, body was sent to Autopsy.

8. Pursuant to the Requisition from the Inspector of Police, P.W.8 - Dr.Aruna Valarmathi, Ulundurpet Government Hospital has conducted Autopsy on the body of deceased Chakravarthy. She has noted:- "...Incised wound 2 inches on the Pinna of left Ear; Blood about 200 ml on the Sub-arachnoid space; Oozing right frontal lobe pale and ischaemic clots on the left frontal and parietal areas clots are seen on the right parietal area; blood is seen in the Cranial fossa... " Viscera was sent to Chemical Analysis. Alcohol or any other poison was not detected in any of the Viscera organs. On perusal of the Viscera Report, P.W.8 opined that the deceased died of Shock and Haemorrhage due to Head injuries and Intracranial Haemorrhage and issued Ex.P.10 - Final Opinion. On completion of investigation, Charge Sheet was filed against the accused under S.302 I.P.C. on 10.03.1995.

9. To establish the guilt of the accused, in the trial Court, P.Ws.1 to 11 were examined. Exs.P.1 to P.18 were marked. M.O.1 was remanded to Court. The accused was questioned under S.313 Crl.P.C. about the incriminating evidence and circumstances. Denying all of them, the accused had stated that false case has been foisted against him.

10. In consideration of the evidence, the learned Sessions Judge found that the evidence of P.W.1 - Natesa Padayachi is reliable and the hostility of P.W.2 - Ramalingam would not in any way affect the prosecution case. The defence raised by the accused that injuries to Amirthalingam, father of the accused were not properly explained under Rule 588-A of Police Standing Orders was rejected by the trial Court. Pointing out that the occurrence between Amirthalingam and Chakravarthy was in the morning and that the same has got nothing to do with the occurrence in the evening, learned Sessions Judge found that any quarrel between the deceased and Amirthalingam in the morning is not the occurrence arising out of the same transaction to attract Rule 588-A Police Station orders. On the evidence of P.W.1 coupled with the Medical Evidence, the learned Sessions Judge found that the prosecution has well proved the guilt of the accused and finding that the accused attacked the deceased in a sudden quarrel and that there was no pre-meditation, acquitted the accused under S.302 I.P.C.; but convicted him under S.304 (II) I.P.C. and sentenced him to undergo Imprisonment as aforesaid in Para (1).

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11. Aggrieved over the same, the Appellant / Accused has preferred this appeal. Assailing the findings of the trial Court and the verdict of conviction, the learned counsel for the Appellant / Accused has attacked the approach of the trial Court in relying on the evidence of P.W.1 that it borders on erroneous approach. It is submitted that the variation in the overt act of the accused, particularly the hit on the back side of the Head of deceased Chakravarthy was not properly appreciated by the trial Court. Drawing the attention of the Court to Ex.P.13 - Statement recorded from the deceased by P.W.9 - Head Constable, it is contended that there is no mention of the attack on the Head of deceased Chakravarthy and thus the prosecution has failed to prove that the death was due to that Head injury and that the prosecution case suffers from exaggeration and that benefit of doubt is to be given to the accused. It is further submitted that serious doubts arise on the prosecution case and that the guilt of the accused is not proved beyond reasonable doubt and that the conviction under S.304 (II) I.P.C. is unsustainable.

12. Reiterating the findings of the trail Court and drawing the attention of the Court to the evidence of P.Ws.1 and 3, Mr.V.Jayaprakash Narayanan, learned Government Advocate (Crl.Side) has submitted that the overt act of the accused is well proved by the evidence of P.W.1. It is further submitted that omission of deceased Chakravarthy to mention in Ex.P.13 about the hit on his back side is not a material variation since the same has not been earlier stated in Ex.P.1 - Complaint recorded from P.W.1 - Natesa Padayachi and that the same cannot be urged as a material omission to substantially affect the prosecution case. Contending that the oral evidence is well supported by the Medical Evidence, the learned Government Advocate has submitted that the trial Court has rightly found the accused guilty under S.304 (II) I.P.C. and that there is no reason warranting interference.

13. In consideration of the submissions of both sides, Judgment of the trial Court, evidence and other materials on record, the point that arises for consideration in this appeal is:- Whether the conviction of the Appellant / Accused under S.304 (II) I.P.C. and the sentence of Imprisonment suffers from any infirmity warranting interference ?

14. The accused had ill-feeling and enmity towards the deceased Chakravarthy regarding purchase of land. P.W.5 - Kadharkodi owns 1.27 Acres in Survey No.343/1 and 335/2 of Manakollai Village. P.W.5 - Kadharkodi entered into an agreement of sale with the father of the accused - Amirthalingam on 09.06.1990 (Ex.D.1) for Rs.6,000/-. Advance amount of Rs.5,850/- was also paid. According to P.W.5, he was insisting Amirthalingam to purchase the land and get the sale deed executed. For one reason or other, Amirthalingam

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delayed in performing his part of the contract and getting the sale deed executed. Hence P.W.5 has sold 27 Cents to P.W.4 – Gopal. Deceased Chakravarthy had arranged for the sale of 27 Cents in favour of P.W.4 – Gopal. Due to the act of the deceased in arranging sale of the land of 27 Cents in favour of P.W.4, the accused had developed enmity towards the deceased.

15. That there had been agreement of sale in the name of Amirthalingam by P.W.5 – Kadharkodi is strengthened by Ex.D.1. That the accused had enmity and ill-feeling towards the deceased is well spoken by P.W.4 – Gopal. P.W.4 has clearly stated that the accused and his father were frequently quarrelling with the deceased. He has also stated that he had paid Rs.3,000/- and purchased 27 Cents from P.W.5 – Kadharkodi and that Chakravarthy greatly helped him to purchase the land. Since the deceased has helped P.W.4 to purchase the land, quite naturally the accused could not purchase the land from P.W.5 and he might have developed ill-feeling towards the deceased. The prosecution has successfully proved the motive aspect which strengthens the case of prosecution.

16. The occurrence was on 04.04.1993 in two places. When deceased Chakravarthy came followed by his wife Vasuki, Vel Murugan (Son of Amirthalingam), brother of accused picked up quarrel with Chakravarthy on the evening of 04.04.1993 – 5.00 p.m. saying " உன்னால் தாண்டா எங்களுக்கு எழுதி வைக்க வேண்டிய நிலத்தை கோபாலுக்கு எழுதி வைத்துவிட்டான் கதர்கொடி ". This occurrence was near their field. P.W.3 – Selvaraj, P.W.6 – Kaliaperumal and one Chinnathambi have pacified him. Thereafter the deceased had taken P.W.1 to go to the Police Station.

17. Deceased Chakravarthy and P.W.1 – Natesa Padayachi had proceeded to Mangalampettai Police Station at about 5.30 p.m. While they were proceeding near Kokkan Palathan Kuttai, the accused waylaid the deceased and scolded him stating that " எனக்கு சேர வேண்டிய நிலத்தை கோபால் படையாச்சிக்கு கதர்கொடி எழுதிக் கொடுத்ததற்கு போனாயே உன்னால் தாண்டா எனக்கு சேர வேண்டிய நிலத்தை கோபால் படையாச்சிக்கு கதர்கொடி எழுதிக் கொடுத்தான் ". So saying, the accused had beaten the deceased with M.O.1 – Bamboo Stick on the left Ear. When Chakravarthy had fallen down, the accused had further beaten him on the back side of the Head. P.W.1 had prevented the accused and P.W.2 – Ramalingam (who turned hostile) is also said to have prevented the accused. P.W.1 – Natesa Padayachi and P.W.2 – Ramalingam are said to be the Eye Witnesses. P.W.2 has turned hostile. Though he has turned hostile, the sole testimony of P.W.1 is well supported by other evidence.

18. Evidence of P.W.1 – Natesa Padayachi is strengthened by the fact that he had set the law in motion in appropriate time. He went to Mangalampettai Police Station

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and lodged Ex.P.1 – Complaint on the occurrence. On the basis of which case was registered in Crime No.94 of 1993 under Ss.294 and 325 I.P.C. under Ex.P.11 – First Information Report. Prompt registration of the First Information Report lends assurance to the credibility of P.W.1. In Ex.P.1 – Complaint also P.W.1 has clearly stated about the overt act of the accused that the accused had beaten the deceased on the Occipitory region and on the left Ear. There is no material variation between the evidence of P.W.1 and the narration of events in Ex.P.1 – Complaint.

19. Occurrence at Kokkan Palathan Kuttai was only in continuation of earlier occurrence near the field of the accused. P.W.3 – Selvaraj has clearly spoken about the same. Evidence of P.W.3 strengthens the prosecution case and the occurrence. As per the opinion evidence of P.W.8 – Dr.Aruna Valarmathi, death was due to Head Injury and Intracranial Haemorrhage. P.W.8 has noted:- "... Incised wound on the Pinna of left Ear; Oozing of right frontal lobe; ischaemic clots on the left frontal and parietal areas and clots on the right parietal area... " Case of prosecution is mainly attacked on the ground that the injury on the back side of the Head has not been properly explained and as per the Medical Evidence, death is said to be due to Head injury and that omission on the part of the prosecution seriously undermines the prosecution case. In this regard, learned counsel for the Appellant / Accused has mainly placed reliance upon Ex.P.13 – Statement recorded from the deceased Chakravarthy on 05.04.1993 – 9.30 a.m. by P.W.9 – Head Constable. In his Statement, deceased Chakravarthy has only stated that the accused had beaten him on his left Ear and that his left Ear has torn and that he has fainted. Hence it is contended that if really the accused had beaten on the back of the Head, the deceased would have certainly stated about the same in his Statement in Ex.P.13 and that prosecution suffers from exaggeration throwing serious doubts on the prosecution case. This contention does not merit acceptance. From the evidence of P.W.1 – Natesa Padayachi, it is seen that after the hit on the left Ear, Chakravarthy had fallen down and only thereafter the accused had beaten on the back side of the Head. Hence attack on the back side of the head would not have been known to deceased Chakravarthy even after he had regained his consciousness. Besides, while giving Ex.P.13 – Statement, Chakravarthy was under great pain and shock. He was being attacked with M.O.1 – Bamboo Stick measuring about 6 feet. He must have been placed under great pain and shock. Under that situation, Chakravarthy might have omitted to mention the attack on the back side of his Head. The omission of the attack on his back side of the Head in Ex.P.13 – Statement does not undermine the prosecution case. In fact, in Ex.P.6 – Accident Register, Injury No.2 – Contusion on the Occipit of Head was clearly noted while Chakravarthy was examined in Ulundurpet Government Hospital. The contention urged that the

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prosecution suffers from exaggeration does not merit acceptance.

20. It is mainly contended that the trial court erred in basing the conviction on the sole testimony of P.W.1 – Natesa Padayachi and that it is unsafe to base the conviction on the evidence of P.W.1. It is not as if evidence of P.W.1 stands in isolation. As noted earlier, on 05.04.1993, Ex.P.13 – Statement of the deceased Chakravarthy was recorded by P.W.9 – Head Constable. Ex.P.13 – Statement of the deceased which is in the nature of Dying Declaration, has more evidentiary value. In Ex.P.13, Chakravarthy has clearly stated about the attack, which reads thus:-

> " உன்னால் தாண்டா எங்களுக்கு எழுதித் தரவேண்டிய நிலத்தை கதர்கொடி கோபால் என்பவருக்கு எழுதிக் கொடுத்துவிட்டார் என்று திட்டியும் தன் கையில் வைத்திருந்த மூங்கில் தடியால் என் இடது காலில் அடித்தார். என் இடது பக்க காது அறுந்து நான் மயங்கி விழுந்துவிட்டேன் ".

Statement (Ex.P.13) of the deceased Chakravarthy about the overt act of the accused amply strengthens the evidence of P.W.1 – Natesa Padayachi.

21. After the case was registered, Chakravarthy was referred to Ulundurpet Government Hospital. As per Ex.P.16 – Wound Certificate, the injuries are alleged to have been caused by the " assault by two persons with sticks and hand on his head and body on 04.04.1993 – 5.30 p.m. at the Road near Manakollai Village ". Likewise, in Ex.P.6 – Accident Register also, the attack on the deceased is said to have been due to " ... Assault by two persons with stick and hands on his Head and Body ...". Case of prosecution is mainly attacked on the ground that when the deceased is said to have been attacked by two persons, filing of Charge Sheet against the single accused raises serious doubts that the prosecution has not come out with true version. This contention does not merit acceptance. As noted earlier, in the preluding occurrence near the field of the accused, the deceased was scolded by Vel Murugan (Brother of the accused) and also by the accused. It is perhaps due to that reason, the name of the assailants are mentioned as " Two " in Ex.P.6 and Ex.P.16. Mention of the names of assailants as "Two persons" would not in any way substantially affect the prosecution case.

22. The accused was arrested on 05.04.1993 – 5.00 a.m. by P.W.9 – Head Constable. When being questioned, the accused had produced M.O.1 – Bamboo Stick, which was seized under Ex.P.3 – Seizure Mahazar in the presence of P.W.6 – Kaliaperumal and one Murugesan. P.W.1 has identified M.O.1 – Bamboo Stick as the weapon of assault. Recovery of M.O.1 – Bamboo Stick as the weapon of assault and identification of the same by P.W.1 as the weapon of assault is a strong

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militating circumstance against the accused.

23. Amirthalingam, father of accused is also said to have sustained injuries on 04.04.1993 - 7.00 p.m. Ex.D.2 is the Wound Certificate of Amirthalingam from which it is seen that Amirthalingam sustained:- Lacerated wound on the left upper part of Thumb; Abrasion on the left toe left leg; Horizontal contusion over the left back of Chest; and contusion on the Right Thigh. Amirthalingam is said to have sustained injuries at 7.00 p.m. on 04.04.1993. There is no consistent case as to the attack on Amirthalingam. There is nothing to suggest that Amirthalingam sustained injuries in the same transaction at 5.30 p.m. Duty is cast upon the prosecution to explain the injuries on the accused party only if it is shown that the injuries were caused in the same transaction. Injuries on Amirthalingam are not proved to have been caused in the same transaction. The learned Sessions Judge has rightly found that the injuries caused to Amirthalingam have not arisen out of the same transaction and that the same does not attract 588-A Police Standing Orders. This aspect was not urged as a contentious point in this appeal.

24. The accused is proved to be responsible for causing the death of deceased Chakravarthy. Due to ill-feeling that he could not purchase the land because of the act of deceased, the accused attacked the deceased in the spur of moment. Angered over the deceased that he was responsible for not getting the land, the accused had hit the deceased with M.O.1 - Bamboo Stick. From Ex.P.3 - Seizure Mahazar, it is seen that M.O.1 - Bamboo Stick measures 6 feet. The deceased sustained:- Incised wound 2 inches on the Pinna of left Ear; Blood about 200 ml seen on the Sub-arachnoid space; Oozing right frontal lobe pale and ischaemic clots are seen on the left frontal and parietal areas clots are seen on the right parietal area; blood is seen in the Cranial fossa. To cause that extensive injuries on the frontal bone, M.O.1 - Bamboo Stick must have been forcibly wielded. There was no pre-meditation for the occurrence. In consideration of the evidence and circumstances, the learned Sessions Judge has rightly found the accused guilty under S.304 (II) I.P.C. The verdict of conviction is well in conformity with the evidence on record. In consideration of the nature of the weapon used and the injuries sustained, the sentence of Imprisonment of Five years cannot be said to be harsh or unreasonable warranting interference. Finding of guilt, conviction and the sentence of Imprisonment are to be confirmed and this appeal has no merits and is bound to fail.

25. Therefore, the Judgment of the Additional Sessions Court, Cuddalore in S.C.No.14 of 1997 (dated: 13.11.1997) convicting the Appellant / Accused under S.304 (II) I.P.C. and the sentence of Imprisonment of Five Years are confirmed and this appeal is dismissed.

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26. The Trial Court is directed to take immediate steps for securing the Appellant / Appellant to commit him to prison for serving the remaining period of sentence. The trial Court is also directed to comply with the above direction within three months and the compliance of the above direction may be intimated to this Court at once within the time stipulated.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sbi

To
1. The Additional Sessions Judge, Cuddalore.

2. -do- throgh The Principal Sessions Judge,
   Cuddalore.

3. The Judicial Magistrate, No.I, Chidambaram.

4. -do- through the Chief Judicial Magistrate, Cuddalore.

5. The Superintendent, Central Prison,
   Cuddalore.

6. The Sub Inspector of Police,
   Mangalampettai Police Station,
   Cuddalore.

7. The Public Prosecutor, High Court, Madras.

8. The Section Officer, Criminal Section,
High Court, Madras.
(to watch the compliance of the direction)

+ 1 CC to Mr.A.R.Nagarajan, Advocate SR NO 56799

Crl.A.No.920 of 1997
22.12.2004.

cp(CO)
GP

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